

# David B. Rankin

Attorney at Law

350 Broadway, Suite 700  
New York, NY 10013

David@DBRankinLaw.com  
Phone: 212-226-4507  
Fax: 212-658-9480

## VIA ECF ONLY

January 2, 2007

Hon. Louis L. Stanton  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St., Room 2250  
New York, NY 10007

RE: Barturen et. al. v. Wild Edibles et. al.  
07 CIV 8127

Dear Honorable Judge Stanton:

Please accept this letter application for attorneys' fees on behalf of both my office and Levy Ratner, P.C., pursuant to F.R.C.P. Rule 54 (d)(1) and 29 U.S.C. § 216(b). The basis for this application is this Court's December 18, 2007 Opinion, Order, and Injunction requiring the Defendants provide counsel with three days notice before an adverse employment action is taken against any named or potential plaintiff.

The standard for determining if a party is entitled to an award of attorneys' fees in the Second Circuit as a prevailing party is set out in Vacchio v. Ashcroft, 404 F.3d 663, 674 (2d Cir. 2005) interpreting Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 US 598 (2001) and is as follows, "Buckhannon states that status as a prevailing party is conferred whenever there is a court ordered change in the legal relationship between the plaintiff and the defendant or a material alteration of the legal relationship of the parties" (internal citations omitted) *See also*, Pres. Coalition of Erie Co. v. Fed. Trans. Admin., 356 F.3d 444, 452 (2d Cir. 2004). Vacchio 404 F.3d at 674 goes on to cite Select Milk Producers, Inc. v. Veneman, 304 F. Supp. 2d 45, 52 (D.D.C. 2004) showing that "the preliminary injunction [Milk Producers] in this case did create a material alteration in the legal relationship between the parties as required in Buckhannon..." Showing preliminary injunctions are appropriately the subject to prevailing party applications for attorneys' fees and if a change in the legal relationship is found, then an award of attorneys' fees is proper.

Clearly, the legal relationships between the parties have been altered by the Order of

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December 18, 2007. The Order states, “[a]ll such persons are further restrained and enjoined from taking adverse employment action against, or terminating the employment of, any plaintiff or other employee without providing plaintiffs’ counsel with three days’ prior notice, except that defendants may suspend an employee with notice one day thereafter to plaintiffs’ counsel when suspension is urgently necessary as a matter of health, safety or to avoid threatened violence.” Prior to the application for a preliminary injunction and temporary restraining order the defendants were free to subject employees to adverse employment actions without notice to counsel and a three days waiting period. Therefore, the legal relationships between the parties have been altered in the plaintiffs’ favor and they are entitled to attorneys’ fees as a prevailing party.

Attached to this letter application is the summary of work activity for both the Law Office of David B. Rankin and Levi Ratner, P.C..

Thank you for your consideration.

Best regards,

/s/

David B. Rankin

DBR/mmt

Attachments

cc: Levi Ratner, P.C.

Meltzer, Lippe, Goldstein & Breitstone (VIA ECF ONLY)

**LEVY RATNER, P.C.**

Attorneys at Law  
 80 Eighth Avenue  
 New York, NY 10011-5126  
 Telephone (212) 627-8100  
 Fax (212) 627-8182  
 Federal Tax ID: 13-3726314

December 27, 2007

Invoice submitted to:

Barturen Borges et al  
 (Application for Attys Fees)

**For Professional Services Rendered  
 through December 21 2007**

**Re: Barturen, Borges, Molina, Molina et al v. Wild Edibles**

		<u>Hours</u>	<u>Amount</u>
9/18/2007	ALB Telephone calls w/D Rankin (DR); review complaint	1.00	
9/19/2007	RAL Office confs w/ALB, review complaint	0.60	
	DE Telephone call w/ALB, review complaint	0.50	
9/24/2007	DE Research re: wage and hour	1.00	
9/25/2007	DE Meeting w/atty and ALB, review papers	3.00	
	ALB Review docs; mtg w/DR	2.00	
10/1/2007	ALB Telephone calls w/DR re: injunction motion	0.20	
10/9/2007	ALB Telephone calls w/DR; o/c w/SC re: motion for contempt	0.40	
10/10/2007	ALB Office conf w/SC, DE; research; review judge's rules re: contempt motion	1.80	
	SC Legal research; contempt motion	2.50	
10/11/2007	ALB Draft contempt motion; t/cs w/DR; research	3.60	
	SC Office conf w/ALB re: contempt motion	0.20	
10/12/2007	ALB Office conf w/SC re: contempt motion	0.30	
	SC Legal research re: contempt motion	2.20	
10/15/2007	ALB Review hearing transcript; review ltr from defendants; t/cs w/DR; o/c w/SC; draft memo of law re: contempt motion	6.60	
	SC Office conf w/ALB; legal research for contempt motion	2.20	
10/16/2007	ALB Emails w/DR; review affidavits and other docs	0.60	
	SC Office conf w/ALB; t/c w/DR	0.20	
10/17/2007	ALB Emails; review docs; o/c w/DE re: injunction motion	1.00	
10/18/2007	DE Review materials, o/c w/ALB and SC	2.00	
	ALB Office conf w/DE, SC; t/cs w/DR; review affidavits and memo of law re: retaliation claims; motion for preliminary injunction	2.00	
	SC Office conf w/ALB and DE; t/c w/DR; mtg w/DR at his office; attend SDNY hearing re: retaliation and secondary boycott; draft memo re: retaliation; review pleadings and case file	11.20	
	RS Office conf w/SC re: Notice of Appearance, create Notice of Appearance	0.30	
10/19/2007	DE Office conf w/SC, draft outline for case	3.00	

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		<u>Hours</u>	<u>Amount</u>
10/19/2007	SC Office conf w/DE	1.20	
10/22/2007	ALB Office conf w/SC, DE re: injunction motion	0.60	
	SC Office conf w/ALB re: prep for mtg w/DR	0.80	
10/23/2007	ALB Meeting w/DR re: litigation strategy	1.00	
	SC Office conf w/ALB; mtg w/DR; review research re: class action and collective action	1.70	
	LAW Research re: class action vs. collective action under FLSA per SC	2.20	
10/24/2007	SC Legal research re: class action v. collective action	0.50	
10/25/2007	SC Legal research	0.50	
10/26/2007	SC Telephone call w/ALB; legal research re: class cert and collective action	1.50	
10/28/2007	SC Legal research re: class actions	3.30	
10/29/2007	ALB Office conf w/SC; t/cs w/DR re: collective action motion	0.60	
	SC Legal research re: class action vs. collective action	0.80	
11/1/2007	SC Legal research	0.80	
11/5/2007	SC Office conf w/ALB re: motion for collective action cert mtg w/DR re: status of case	2.20	
11/6/2007	SC Legal research on NYS outside sales exemption	0.20	
11/14/2007	ALB Review ltr from counsel re: preliminary injunction	0.20	
11/16/2007	SC Prepare for client mtg	0.20	
11/17/2007	SC Meeting w/DR and Plaintiffs at union local in Queens	5.30	
11/19/2007	ALB Office conf w/SC re: motion for collective action	0.30	
11/26/2007	ALB Office conf w/SC; conf call w/co-counsel re: prep for settlement mtg	1.00	
	SC Office conf w/ALB; conf call w/DR; review file	1.80	
11/27/2007	ALB Prepare for and attend settlement conference	2.00	
	SC Meeting w/employer atty; mtg w/co-counsel	1.80	
11/29/2007	SC Investigate and subscribe to wage and hour clearinghouse	0.20	
11/30/2007	SC Telephone call w/M Taylor (MT) re: contacting Plaintiffs	0.20	
12/4/2007	SC Telephone call w/Plaintiff re: break times, hrs worked	0.50	
12/6/2007	ALB Prepare for and attend settlement conference	1.60	
	SC Prepare for settlement mtg; t/c w/Plaintiff re: schedules; o/c w/ALB	2.20	
12/10/2007	SC Analyze settlement offer; t/c w/MT	0.50	
12/11/2007	SC Analyze settlement proposals and damages estimates	2.00	
12/12/2007	SC Analyze settlement proposals; estimate damages; email DR and MT	0.80	
12/13/2007	SC Office conf w/ALB; t/c w/MT; review settlement proposals	1.20	
12/14/2007	ALB Telephone calls w/counsel; o/c w/SC; review emails re: settlement	0.40	
	SC Prepare for 12/15 mtg w/Plaintiffs; review file; review damage claims	2.20	
12/15/2007	SC Meeting w/Plaintiffs at union local in Queens	4.20	
12/19/2007	SC Prepare for mtg w/Plaintiffs; o/c w/ALB; t/c w/DR; review file	3.30	
12/20/2007	SC Meeting w/Plaintiffs; o/c w/ALB; DE; DR re: mtg and settlement agmt reviews	4.30	
12/21/2007	SC Draft memo to file; email ALB; review file; draft and send ltr to Plaintiffs	2.00	
		<u>104.50</u>	<u>\$24,692.50</u>

#### Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Richard A. Levy, Partner	0.60	395.00	\$237.00
Daniel Engelstein, Partner	9.50	395.00	\$3,752.50
Allyson L. Belovin, Partner	27.20	300.00	\$8,160.00
Susan Cameron, Associate	64.70	190.00	\$12,293.00
Richard Storm, Paralegal	0.30	100.00	\$30.00
Law Clerks (Paralegal)	2.20	100.00	\$220.00

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**Balance due**

Amount

\$24,692.50

***Payment Due within 30 Days***

**Law Office of David B. Rankin****Case Name: Wild Edibles****Hired by: Workers**

<u>Date and work completed</u>	<u>Hours Worked</u>	<u>Total Time</u>
September 6, 2007		
Research on Complaints for Intern	2:45 – 3:00 pm	.25
September 13, 2007		
Aff templates to Interns	2:00 – 2:12 pm	.2
Reading Communication btwn WE and BWI	2:30 – 2:42 pm	.2
EM w/ BWI		
September 14, 2007		
Call from T. Bianco	10:30 – 10:45 am	.25
EM to intern re: B. Randell's Aff. (edits)	11:00 – 11:30 am	.5
Reading RedEye Grill	1:00 – 2:30 pm	1.5
Researching FLSA	3:00 – 4:00 pm	1.0
Researching FLSA Exemptions	7:00 – 9:45 pm	2.75
Drafting Complaint	9:45 – 10:30 pm	1.25
September 15, 2007		
Drafting Complaint	11:00 – 8:45 pm	9.75
Researching FLSA		
Reading Redeye Grill Documents		
September 16, 2007		
Drafting & Editing Complaint		
FLSA Research		
MOL Drafting and editing	10:00 – 7:30 pm	9.5
September 17, 2007		
Complaint Final Edits	9:15 – 10:45 am	1.5
Client/BW/media phone calls & emails	2:00 – 4:15 pm	2.25
September 18, 2007		
Bond Research & Calls	1:00 – 3:00 pm	2
IWW meeting	4:30 – 5:00 pm	.5
September 19, 2007		
Bond Calls	10:30 – 11:00 am	.5
Bond Letter Drafting	2:30 – 3:45 pm	1.25
Oral Argument Prep	4:30 – 5:45 pm	1.25

September 20, 2007		
Oral Argument Prep	8:00 – 10:15 am	2.25
Responsive Research	1:30 – 2:45 pm	1.25
Hearing	4:00 – 6:00 pm	2
Client Meetings	6:00 – 7:15 pm	1.25
September 25, 2007		
LR meeting prep & call	3:00 – 5:00 pm	2
September 27, 2007		
Martinez Affidavit Work	1:00 – 1:30 pm	.5
October 1, 2007		
AB Call	3:00 – 3:12 pm	.2
October 3, 2007		
Master Strategy Meeting	1:00 – 3:00 pm	2
October 10, 2007		
Stanton Letter (Draft and Calls)	11:00 – 12:30 am	1.5
October 11, 2007		
Lara Affidavit Work	2:15 – 3:45 pm	1.5
October 13, 2007		
Drafting Support MOL	11:00 – 4:00 pm	5
October 14, 2007		
Support MOL research	1:00 – 3:15 pm	2.25
Affidavit Work	4:00 – 6:45 pm	2.75
October 15, 2007		
Declaration drafting/editing	1:15 – 3:30 pm	2.25
October 16, 2007		
MOL editing & revising	10:15 – 12:30 pm	2.25
October 17, 2007		
MOL/Declaration revising	7:00 pm – 12:00 am	5
October 18, 2007		
Support MOL/Declaration editing	12:00 – 3:00 am	3
Final Editing Support MOL	10:15 – 11:45 am	1.5
Oral Argument Prep	1:00 – 2:15 pm	1.25
Hearing	3:00 – 5:00 pm	2

Client meetings	5:00 – 6:30 pm	1.5
Strategic Conference w/ MT	8:00 – 9:45 pm	1.75

October 19, 2007		
Client and LR calls	10:15 – 10:45 am	.5

November 5, 2007		
LR meeting	2:00 – 4:00 pm	2

November 17, 2007		
Client Meeting (Queens)	2:15 – 5:30 pm	3.25

November 27, 2007		
Settlement Conference	5:30 – 7:30 pm	2.0

December 6, 2007		
2nd Settlement Confernece	6:30 – 7:30 pm	1

December 14, 2007		
Review Letter	2:00 – 2:06	0.1

December 15, 2007		
Client Meeting (Queens)	5:00 – 7:30 pm	2.5

December 20, 2007		
Client Meeting (LR)	2:30 – 5:30 pm	3

December 21, 2007		
BWI Phone	3:00 – 3:12 pm	.2
Bianco Phone (x3)	Various	.5
Discussion w/ MMT	3:15 – 3:45 pm	.75

December 26, 2007		
Phone w/ Bianco	11:00 – 11:06 am	.1
Phone conference w/ Bianco and Allyson	11:30 – 12: 15	.75
Phone /w BWI	5:30 – 5:36 pm	.1
Letter review	5:45 – 5:51 pm	.1

<b>Total Hours Worked</b>	<b>100.5</b>
<b>Hourly Rate</b>	<b>\$ 250</b>
<b>Total for Work Preformed</b>	<b>\$ 25,125</b>



**Beth Baltimore (Brooklyn Law Student/translator)**

<u>Date and work completed</u>	<u>Hours Worked</u>	<u>Total Time</u>
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October 5, 2007 Lalo Affidavit	2:00 pm – 6:00 pm	4
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October 14, 2007 Affidavit Interviews	4:00 pm – 8:00 pm	4
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October 15, 2007 Affidavit Interviews	10:00 – 2:00 pm	4
Translations	3:00 – 7:00 pm	4

<b>Total Hours Worked</b>		<b>12.0</b>
<b>Hourly Rate</b>		<b>\$ 80</b>
<b>Total for Work Preformed</b>		<b>\$ 960</b>

**Andrea Gruttin (NYU Law Student/translator)**

<u>Date and work completed</u>	<u>Hours Worked</u>	<u>Total Time</u>
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October 3, 2007 Raul Phone Interview	4:15 – 5:15 pm	1
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October 5, 2007 Affidavit interviews, review, & translation	12:00 – 2:00 pm	2
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October 11, 2007 MT Update and Prep	3:45 – 4:15	.5
Pedro Phone Interview	4:30 – 5:45	1.25

<b>Total Hours Worked</b>		<b>4.75</b>
<b>Hourly Rate</b>		<b>\$ 80</b>
<b>Total for Work Preformed</b>		<b>\$ 380</b>

**Mark Taylor Time**

<u>Date and work completed</u>	<u>Hours Worked</u>	<u>Total Time</u>
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August 25, 2007		
Client Meeting Prep	11:00 – 12:00pm	1
Meeting in Queens – intake and interviews	12:00 – 3:00pm	3
Intake paperwork	4:00-5:15pm	1.25
August 27, 2007		
Demand letter	11:00–12:30pm	1.5
September 6, 2007		
Client Meeting in Queens	1:30 – 4:45 pm	3.25
Intake paperwork	5:30 pm – 7:15 pm	1.75
September 15, 2007		
Client Meeting in Queens– Affidavits	12:30-4:15 pm	3.75
Complaint editing + drafting	6:00-8:30	2.5
September 16, 2007		
Complaint editing + printing	1:30-3:45 pm	2.25
Spreadsheet creation	4:00-5:15 pm	1.25
Translation coordination	6:00-6:30 pm	.5
Complaint Research + editing	7:00 – 11:45 pm	4.75
September 17, 2007		
Complaint Printing + Filing	10:30-2:15 pm	3.75
September 18, 2007		
Bond Phone Calls	11:15-1:30 pm	2.25
Bond Phone Calls	3:00-4:45 pm	1.75
September 19, 2007		
Bond Letter Draft and Delivery	3:00-3:45 pm	0.75
September 20, 2007		
Hearing Prep	10:00 – 10:45	.75
Responsive Research	11:15 – 3:30	4.25
Hearing	3:45 – 6:00	2.25
Client Meetings	6:00 – 7:15	1.25
September 27, 2007		
Martinez Affidavit Work	1:15-2:15 pm	1
October 3, 2007		
Master Strategy Conference w/ DBR	1:00 – 3:15 pm	2.25
October 5, 2007		

Lalo Affidavit Work	3:15-3:45	.5
October 10, 2007		
Stanton Letter Edit & Delivery	12:30 – 1:45 pm	1.25
October 11, 2007		
Raymundo Affidavit	2:15-3:30 pm	1.25
Andrea Update and Prep	3:45 – 4:15	.5
October 13, 2007		
Support MOL drafting	12:00 – 3:15 pm	3.25
October 14, 2007		
Client Interviews and Affidavits	4:00 – 8:15 pm	4.25
October 15, 2007		
Client Meeting	12:00-12:30 pm	0.5
October 16, 2007		
Affidavit Translation Work	11:00 – 11:45 am	0.75
October 17, 2007		
Support MOL/ Declaration Drafting & editing	7:00 – 12:00 am	5
October 18, 2007		
Support Papers Drafting, Revising, Editing	12:00 – 5:00 am	5
Hearing	3:00 – 5:00 pm	2
Client Conferences	5:00 – 6:30 pm	1.5
Strategic Conference w/ DR	8:00 – 9:45 pm	1.75
November 14, 2007		
Client call	1:42-1:54 pm	0.2
November 21, 2007		
Settlement Conference Emails	4:50 – 5:02 pm	0.2
November 26, 2007		
SC Call	2:00 – 2:15 pm	0.25
BWI Call	2:40 - 2:55 pm	0.25
Settlement Emails	3:00 – 3:15 pm	0.25
Conference Call	6:45 – 7:15 pm	0.5
November 27, 2007		

Settlement Conference	5:30 – 7:30 pm	2.0
November 28, 2007		
IWW Call	8:50 – 9:20 am	.5
BWI Call	4:30 – 4:45 pm	.25
December 10, 2007		
Client Call	11:00 – 11:15 am	.25
SC Call	4:10 – 4:40 pm	.5
Email affidavits	4:45 – 5:00 pm	.25
December 12, 2007		
SC emails	10:15 – 10:30 am	.25
Client Letter Review	3:00 – 3:15 pm	.25
December 17, 2007		
Case Review, Copy and Organization	11:30 – 2:00 pm	2.5
Docs to SC, review and send	2:15 – 2:45	.5
December 19, 2007		
Pick-up Decision & Review	9:15 – 9:45 am	.5
IWW call	10:15 – 10:30 am	.25
December 21, 2007		
Bianco Call	12:15 – 12:21	.1
<b>Total Hours Worked</b>		<b>84.25</b>
<b>Hourly Rate</b>		<b>\$ 125</b>
<b>Total for Work Preformed</b>		<b>\$ 10,531.25</b>
<b><u>Expenses</u></b>		
<b>Filing Fees</b>		<b>\$350</b>
<b>Delivery and Service</b>		<b>\$100</b>
<b>Total</b>		<b>\$450</b>
<b><u>Total</u></b>		
<b>DR</b>		<b>\$ 25,125</b>
<b>BB</b>		<b>\$ 960</b>
<b>AG</b>		<b>\$ 380</b>
<b>MT</b>		<b>\$10,531.25</b>
<b>Expenses</b>		<b>\$ 450</b>
<b>TOTAL</b>		<b>\$37,446.25</b>